



## LAW & ECONOMICS CENTER

### FEDERAL JUDGES AND ATTORNEYS GENERAL INITIATIVES

#### Funding Prospectus

The election of Donald Trump presents a historic opportunity for a new president to reshape the federal judiciary, reform the regulatory state, promote economic growth, and restore constitutional federalism. President Trump will have a rare opening to appoint hundreds of new federal judges before the end of his first term, exerting an influence on the judicial branch unlike any president since Ronald Reagan. At the same time, as the federal government retreats from its aggressive regulatory posture of recent years and returns more authority back to the states, state attorneys general will be called upon both to help effectuate many of these changes and to support or oppose parts of the president's policy agenda in the courts.

To take advantage of this once-in-a-generation opportunity to shape the contours of federal law for decades to come, the Law & Economics Center has launched a Federal Judges Initiative and an Attorneys General Initiative to develop special courses and curricula expressly designed to educate the new federal judges who will be appointed over the coming years and state AGs and their senior-most staff lawyers about the law and economics of these important policy matters.

For four decades, the Law & Economics Center (LEC) has provided the classroom where federal and state judges, state AGs, and other legal professionals have been trained in basic economics, accounting, statistics, regulatory analysis, and other disciplines. We believe that, if judges and other policymakers understand economics and the important interplay of economics and the law, they will be more likely to make sound decisions that support the rule of law and the free enterprise system, thereby allowing free and responsible individuals to engage in productive enterprises, create new economic opportunities, and generally determine their own courses in life. Our programs are designed to equip participants with the tools for understanding and appreciating the economic consequences of their policy decisions. And, since we began offering educational programs for legal professionals, over 5,000 judges and over 700 AGs and senior AG office attorneys have participated in one or more of our programs. But today, with the scope of federal policy in a period of enormous transition, our work is more important than ever.

#### ABOUT THE LAW & ECONOMICS CENTER

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The Law & Economics Center at George Mason University's Antonin Scalia Law School is a national center for research and education that focuses on the timely and relevant economic analysis of legal and public policy issues confronting our nation. Because laws are incentives for changing behavior and achieving certain policy objectives, it is vital that the public servants who create and shape our laws understand economic concepts and theory. Experience has shown, however, that although judges and other policymakers may be experts in the law, they often have little familiarity with economics and struggle to identify the unintended consequences or the incentive structures created by particular legal decisions or public policies. We provide economics education to policymakers in the belief that such insight will foster a greater appreciation for the free enterprise system and the rule of law that undergirds it. As such, the LEC is a voice of economic reason in a policy arena dominated by hostility to the very industries that make it possible for our modern economy to thrive.

Since its inception in 1974, the LEC has recognized both the importance of developing timely, relevant, and unassailable research on public policy issues and the value of communicating research findings to those who directly shape our country's public policy discussions. We offer intellectually rigorous and balanced educational programs to federal and state judges, state attorneys general and their professional staff attorneys, U.S. congressional staff members, and other policymakers. In a typical year, more than 300 judges, 200 attorneys general staff lawyers, and 200 congressional staffers attend at least one of our programs; many attend more than one. These programs offer participants a solid grounding in the concepts and tools

used in economics, finance, accounting, statistics, and the scientific method, and participants also learn how to apply these fundamental principles to the analysis of a range of public policy issues related to banking, finance, health care, education, the environment, computer and communication technologies, and many others.

We are at a critical point in our nation's history, and the work of the LEC's Judicial Education Program (JEP) and Attorneys General Education Program (AGEP), in particular, has never been more important. The new presidential administration will have a significant impact on the make-up of the federal judiciary as well as the division of power between state and federal governments. The LEC stands ready to provide the training and education newly appointed federal judges and state attorneys general will need to play a constructive role in the public policy process.

## **ABOUT THE JEP AND AGEP**

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Federal and state judges are key players in the policy making process, and the Mason Judicial Education Program is the nation's preeminent provider of high-quality, balanced judicial seminars and conferences that focus on economic analysis and its relevance to the rule of law. The JEP's programs are designed to improve judicial knowledge as well as be timely, relevant, and intellectually stimulating. The LEC's flagship course offerings for judges are the Introductory and Advanced Economics Institutes for Judges. Over a full week of intensive classroom lectures and discussion, federal and state judges are given a solid grounding in economics, finance, and the scientific method, and the practical relevance of these disciplines is emphasized through the analysis of numerous cases. The judges leave the Economic Institutes equipped with a basic knowledge that will aid them in the performance of their jobs and enhance the judicial system.

Other JEP programs build on the legal and economic analysis skills taught in the Economics Institutes and apply them to individual topic areas, such as banking and financial markets, labor economics, energy and the environment, health care, and the economics of tort litigation. The purpose of these symposia and conferences is to provide judges with a deeper, more focused analysis of specific current legal and public policy issues in a dynamic format that combines lectures and debates over periods as short as two days to as long as a week. Leading attorneys and legal scholars provide a basic grounding in the fundamentals of important issues of the day and debate the issues from opposing viewpoints. These timely programs effectively alert the judiciary to emerging challenges in substantive legal matters.

Through their law enforcement and litigation decisions, state attorneys general are also among the most important policymakers in the country, and their work often has broad economic impacts. The Mason Attorneys General Education Program offers courses that provide state AGs and their senior staff attorneys with a broad-based understanding of economics and its relevance to pressing public policy debates of the day. Similar to the Judicial Education Program, the AGEP offers Economics Institute programs for attorneys general senior staff members to instruct them in the basic concepts of law and economics with a focus on applications in the public policy arena. The AGEP also runs conferences, seminars, and workshops where participants use their basic economics skills to analyze specific policy issues commonly addressed by state AG offices.

To date, more than 5,000 federal and state court judges representing all 50 states and the District of Columbia have participated in at least one of the LEC's judicial education programs, and the AGEP has hosted more than 700 attorneys general senior staff attorneys from 47 U.S. states and territories. These programs are tested and proven, and they provide the blueprint for two new and extraordinarily timely LEC initiatives addressing the specific needs of newly appointed federal judges and state attorneys general.

## **FEDERAL JUDGES INITIATIVE**

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The inauguration of Donald Trump as President in January 2017 will mean significant changes for America's federal government, and few will be as significant as the changes coming to the federal judiciary. There are currently 127 vacancies on the federal bench, and an additional 17 federal judges have already announced that they will retire or take senior status this year. Dozens more will retire or take senior status within the next four years. With the White House and Senate

controlled by the same party, President Trump will have an opportunity to nominate as much as one fourth of the federal judiciary by the end of his first term.

Most newly appointed federal judges come from law firms, state benches, and other government service, and all such judges would benefit from educational programs that give them the tools to understand and appreciate the economic consequences of their court decisions. For forty years, the Law & Economics Center has provided the classroom where federal judges have been trained in basic economics, accounting, statistics, regulatory analysis, and other disciplines. And we stand prepared to do it again.

To meet this new challenge, we have launched a Federal Judges Initiative within our Judicial Education Program, which will develop a series of special courses and curricula specifically designed for training the new federal judges who will be appointed over the coming years. Although those programs will enroll fewer participants than our typical course offerings that attract both federal and state judges, their value will be that they are more focused on the specific, cutting-edge issues of particular interest to new federal judges. They will also cover topics expected to be highly relevant to the current presidential administration's policy agenda, such as the economics of health care and health financing, financial services regulation, environmental and energy regulation, health and safety regulation, privacy, labor and employment law, and telecommunications regulation.

Our first dedicated Federal Judges Initiative program will be held in October 2017, in the form of a three-day symposium on Judicial Deference and Regulatory Agency Science, a topic that will be particularly relevant as the new president and Congress revise the federal government's approach to regulatory policy on a variety of fronts, including health care, environmental protection, energy policy, and consumer safety regulation. This program will provide in-depth analysis of the intellectual foundations of regulatory and administrative law and prepare judges to more closely examine the decision-making of expert agencies and their regulatory methods. Topics to be addressed include the development and use of scientific evidence, understanding cost-benefit analysis and its place in administrative law, the political economy (and real motivations) of regulatory agencies, and many other issues essential to understanding how regulations are shaped, applied, and enforced.

Other programs will address such topics as the economics of health care, health technology, and the market for health services; financial regulation and securities law; antitrust law and competition economics; the economics of federal preemption and competitive federalism; cost-benefit analysis and an understanding of risk; among many others. We expect each of these programs will be approximately two to four days in duration, and that they will feature top faculty drawn from leading academics as well as public and private sector experts.

These topical programs will be supplemented with a number of specially-tailored Case Analysis Workshops that provide an opportunity for judges to hone their economic analysis skills through practical application. Over two-days of intensive programming, the judge participants and our expert faculty jointly study a number of real legal cases that illuminate various economic principles, such as transaction costs and opportunity costs, accurate calculation of damages, asset valuation, and bargaining theory and the structuring of effective incentives. We have asked Federal Appeals Court Judge Douglas H. Ginsburg, who is a professor at the Antonin Scalia Law School, to collaborate with another LEC faculty member in leading the judge participants in an analysis of the legal and economic principles at play in each case. Moreover, each session will be augmented by additional expert faculty members who will be on hand to enrich the discussions.

We also plan to reserve one of our annual Economics Institutes for Judges as a seminar specifically tailored to federal judges. The curriculum would be tweaked to include not only our normal slate of topics, but also subjects of particular interest to federal judges, such as securities law, banking law, the law of federal preemption, etc. In total, we anticipate hosting between five and seven dedicated events through our new Federal Judges Initiative during the coming academic year—though the number may rise if funding permits. And we will ramp up programming in the coming years as more new judges are nominated and confirmed to the federal bench.

To ensure the widest possible reach, Judge Ginsburg has also agreed to help us develop a judicial recruiting and mentoring program that will leverage our extensive network of distinguished Judicial Education Program alumni to enroll new judges in Federal Judges Initiative programs. This roster of veteran JEP judges and our 16-member Judicial Advisory Board will be asked to help recruit new judges, mentor them through their legal and economics training, and attend various Federal Judges Initiative courses together with their mentees. To help manage this mentoring program and the enhanced recruitment needed to fully enroll the Initiative's many courses, we have hired an outreach coordinator—an attorney with extensive experience in both state and federal government—with the primary task of working with the judicial mentors, helping them recruit new judges into the program, establishing his own relationships with the new federal judges, and working with faculty to develop and facilitate Federal Judges Initiative and AG Initiative programming.

The expected influx of new federal judges during the coming three to four years represents a once-in-a-generation opportunity for the LEC to help mentor the federal judiciary's evolution for years to come. We are poised to seize the opportunity and take advantage of it to help train the judges that have such important influence over law and public policy.

### **ATTORNEYS GENERAL INITIATIVE**

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Much as our new Federal Judges Initiative will focus on training newly appointed judges for the special challenges associated with adjudicating the regulatory and constitutional disputes expected to arise in the coming four years, our new Attorneys General Initiative will focus on training state AGs and their senior staff attorneys to play a constructive role in the looming debates over the balancing of regulatory power between national and state governments. The LEC will direct our programmatic offerings to help educate AG staff from around the country in the legal and economic principles needed to prepare for these discussions.

Over the next several years, as the federal government is expected to withdraw from many areas of law and regulation in which it has been especially active in recent decades—such as health care, environmental regulation, energy policy, labor and employment law, and financial regulation—state AGs will have increased opportunities to influence these changes. Efforts by federal agencies to reform regulatory policies and devolve power to the states will no doubt be challenged in court, so state AGs can play a constructive effort in shaping the future of the state and federal regulatory balance. And, should the locus of power on various regulatory fronts shift to the states, AGs and their professional staff attorneys can play an active role in shaping the new structure and implementation of state regulatory policy. The purpose of our Attorneys General Initiative is to prepare state AGs and their staff members to play a role in these important legal and regulatory changes.

Although this initiative builds on the LEC's traditional resources and efforts, we see it as a novel and distinct supplement to traditional LEC programs in terms of the intensity of our recruitment efforts and the focus of various programs. Our general AGEF program offerings will continue to train AG staff on important matters that arise in the special context of state law enforcement, but programs offered through our Attorneys General Initiative will be tooled specifically to provide substantive knowledge on the important constitutional and regulatory issues AGs and their staff members will confront as federal power shifts to the states.

Like our special focus on recruiting new federal judges, the AGs Initiative will also take special efforts to bring additional AGs and more of their staff members to LEC programming, and to devote extra time and effort to mentoring those who participate. Through our extensive programming over the past decade, we already have very close relationships with a number of state AGs. We will leverage these existing relationships to help us recruit new participants—particularly to help ensure that the AGs themselves, and not only their staff members, participate in our educational programs. To do so, we expect to hold a number of Attorneys General Summits that focus on specific topic areas.

Each of the Attorneys General Summits will help participants gain subject-matter knowledge and a deeper understanding of the complex regulatory and litigation environment in which these issues will arise. In areas such as health care, financial services, consumer protection, and environmental policy, AGs can play an active and productive role in creating a new regulatory framework that advances federalism, the rule of law, and pro-growth policy. And the LEC intends to help the nation's AGs play that constructive role.

## BUDGET

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### FY 2018 Judicial Education Program Budget

\$144,000	Introductory Economics Institute for Judges (1 @ 144,000 per program)
132,000	Federal Judges Economics Institute (1 @ 132,000 per program)
161,000	Advanced Economics Institute for Judges (1 @ 161,000 per program)
336,000	Federal Judges Initiative Case Analysis Seminars (3 @ 112,000 per program)
312,000	Federal Judges Initiative Symposia (2 3- or 4-day events @ 156,000 per program)
169,000	JEP Symposium on Civil Justice Issues (1 @ 169,000 per program)
134,000	American College of Business Court Judges (1 @ 134,000 per program)
325,000	Staff
17,000	Administrative & Materials Cost

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**\$1,730,000**      **Total Program Expenses**

### FY 2018 Attorneys General Education Program Budget

\$152,000	Introductory Economics Institute for AGs (1 @ 152,000 per program)
126,000	Consumer Credit Academy (1 @ 126,000 per program)
164,000	Public Policy Institute on Financial Services (1 @ 164,000 per program)
183,000	Attorneys General Initiative Events (1 4-day event @ 183,000 per program)
105,000	Attorneys General Initiative Events (1 2-day event @ 105,000 per program)
129,000	Staff
11,000	Administrative & Materials Cost

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**\$870,000**      **Total Program Expenses**

## CONTRIBUTIONS

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The Law & Economics Center relies on the generosity of individuals, foundations, and corporations to achieve its mission. A list of current donors may be found on our website at [www.MasonLEC.org](http://www.MasonLEC.org).

Contributions in support of the Law & Economics Center may be made to the George Mason University Foundation – a 501(c)(3) corporation established to support the activities of George Mason University. The George Mason University Foundation's Tax Identification Number is 54-1603842. Contributions are tax deductible.

Checks in support of the LEC should be made payable to "George Mason University Foundation," with a use of funds designated for "Law School/LEC," and mailed to:

Todd J. Zywicki  
Executive Director, Law & Economics Center  
George Mason University School of Law  
3301 Fairfax Drive, Suite 440  
Arlington, VA 22201

## CONTACT

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For additional information, please contact Todd J. Zywicki, Executive Director of the LEC, at [tzywick2@gmu.edu](mailto:tzywick2@gmu.edu) or 703.993.9484.